

SCHLACTER & ASSOCIATES
Attorneys for Plaintiff
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By: JED R. SCHLACTER (JRS-4874)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEVEAUX S.A.,	:	11 Civ. 9210 (Marreño)
	:	
Plaintiff,	:	ECF Case
	:	
-against-	:	<u>COMPLAINT</u>
	:	
SAKS INCORPORATED and	:	
KELLWOOD COMPANY,	:	
	:	
Defendants.	:	
-----X		

Plaintiff, by its attorneys, SCHLACTER & ASSOCIATES, for its complaint against defendants, alleges:

JURISDICTION

1. This action, as more fully stated below, is for copyright infringement; arises under Title 17 of the United States Code; jurisdiction is vested in this Court under 28 U.S.C. Section 1338(a); and proper venue exists under 28 U.S.C. Sections 1400(a) and 1391.

THE PARTIES

2. Plaintiff, DEVEAUX S.A. (hereinafter referred to as "DEVEAUX") is a foreign corporation duly organized and existing under the laws of France, with an office located at 69240 Saint-Vincent-De-Reins, France. Plaintiff is a textile mill, selling finished textile piece goods to garment manufacturers.

3. Upon information and belief, defendant, SAKS INCORPORATED (hereinafter referred to as "Saks"), is a foreign corporation with its principal place of business located at 12 East 49th Street, New York, New York, and is a retail organization that, among other things, purchases wearing apparel for resale to consumers, with stores in New York, among other places.

4. Upon information and belief, defendant, KELLWOOD COMPANY (hereinafter referred to as "Kellwood"), is a foreign corporation, with a principal place of business at 600 Kellwood Parkway, Chesterfield, Missouri 63017, as well as offices in New York City, and is a firm which manufactures and distributes wearing apparel throughout the United States, including to the New York area..

PLAINTIFF'S COPYRIGHTED WORK

5. In 2007 an original work of art was created by the plaintiff, and identified as Design Manitobus KX 2310.

6. Since on or about April 6, 2007, plaintiff's Design Manitobus KX 2310 was produced on fabrics, which fabrics are also identified as Design Manitobus KX 2310 (hereinafter referred to as "KX 2310").

7. The design of KX 2310 is wholly original and is copyrightable subject matter under the laws of the United States.

8. In or about April 6, 2007, plaintiff began selling fabrics bearing the design known as KX 2310.

9. All of the provisions of Title 17 of the United States Code, and all of the laws governing Copyright, have been duly complied with; and a Certificate of Registration has been duly received from the Register of Copyrights, covering the design known as KX 2310, identified as follows: Registration No. VA 1- 787-756.

10. Plaintiff is the sole proprietor of all rights, title and interest in and to the Copyright of said design.

11. A photocopy of plaintiff's Certificate of Registration for said copyrighted design is annexed hereto as Exhibit "A".

12. Subsequent to the publication by plaintiff of its Design KX 2310 involved herein, defendants, with full knowledge of the rights of plaintiff therein, infringed plaintiff's Copyright on such design by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising garments bearing a design thereon which is virtually identical to the plaintiff's copyrighted fabric design, or by causing and/or participating in such reproduction by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising, all in violation of the rights of plaintiff under Section 106 of the Copyright Law, Title 17 U.S.C.

13. A photocopy of plaintiff's copyrighted design known as Design KX 2310 is annexed hereto as Exhibit "B", and a photocopy of defendants' said infringement is annexed hereto as Exhibit "C".

14. All of defendants' acts, as set forth herein, were performed without the permission, license or consent of plaintiff.

15. Plaintiff has gone to great expense in producing and promoting the sale of fabrics bearing its copyrighted Design KX 2310.

16. Plaintiff's copyrighted design incorporates carefully prepared and fashionable color combinations, which color combinations have aided greatly in the sale of garments bearing the copyrighted design.

17. As a result of plaintiff's expenditure of money and skill in the promotion for sale of fabrics bearing plaintiff's copyrighted design, the garments have acquired a substantial market value in the trade.

18. Defendants have a design obviously copied from plaintiff's copyrighted design, which copy defendants have been offering and continue to offer for sale. The design printed on defendants' garments is substantially similar, in fact virtually identical, to plaintiff's copyrighted design.

19. Defendants' infringing design (Exhibit "C") is unmistakably copied from plaintiff's design (Exhibit "B").

20. In fact, the defendant Kellwood sampled the plaintiff's copyrighted design directly from the plaintiff, yet did not provide plaintiff with bulk orders for said design. The defendants therefore had clear and indisputable access to plaintiff's copyrighted design.

21. Defendants' garments, when viewed by a consumer, would appear to be identical with a garment of like style bearing plaintiff's copyrighted design.

22. Upon information and belief, defendants have produced their garments incorporating the copied design in a color combination virtually identical to a color combination of plaintiff's design.

23. Defendants, by their acts as aforesaid, have taken advantage of the knowledge and skill of plaintiff and of the good will developed by plaintiff and have capitalized upon the market created for plaintiff's design.

24. The aforesaid acts of defendants in copying plaintiff's design and color combination and selling copies of same constitutes copyright infringement, and by reason of the sale of defendants' garments in competition with the plaintiff's sales of fabrics incorporating the copyrighted design have caused irreparable injury to plaintiff in that plaintiff's market has been greatly reduced thereby, which injury will continue so long as defendants continue to market the copied design.

25. Plaintiff has been damaged by the acts of defendants alleged herein in an amount not as yet known, but believed to be in excess of One Million (\$1,000,000.00) Dollars. The infringing activities of defendants are further and continuously damaging plaintiff in a manner for which plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands:

(1) That defendants, their agents, employees and servants be enjoined pendente lite and permanently from infringing the said Copyright No. VA 1-787-756 of plaintiff covering its Design Manitobus KX 2310 in any manner and from publishing, selling, marketing or otherwise disposing of any textiles and garments imprinted with a design copied from plaintiff's said copyrighted design.

(2) That defendants be required to pay to plaintiff damages in the amount of One Million (\$1,000,000.00) Dollars, plus interest, which plaintiff has sustained in consequence of defendants' infringement of said Copyright and to account for:

(a) all gains, profits and advantages derived by defendants in their infringement of plaintiff's Copyright or such damages as to the Court shall appear proper within the provisions of the copyright statutes;

(3) That defendants be required to deliver up to be impounded during the pendency of this action, all copies of said reproduction of said work of art in their possession or under their control, and to deliver up for destruction all infringing copies and rollers, screens, plates, molds, and other matter for making such infringing copies.

(4) That defendants pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to the plaintiff by the Court.

(5) That plaintiff have such other and further relief as is just.

Dated: New York, New York
December 14, 2011

SCHLACTER & ASSOCIATES
Attorneys for Plaintiff

By: 

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EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VA 1-787-756

**Effective date of
registration:**

September 6, 2011

Title

Title of Work: Manitobus KX 2310

Nature of Work: Design for fabric

Completion/Publication

Year of Completion: 2007

Date of 1st Publication: April 6, 2007

Nation of 1st Publication: France

Author

■ **Author:** Deveaux S.A.

Author Created: Design on sheetlike material

Work made for hire: Yes

Citizen of: France

Anonymous: No

Pseudonymous: No

Copyright claimant

Copyright Claimant: Deveaux S.A.

69240 Saint Vincent de Reins, France

Limitation of copyright claim

Previously registered: No

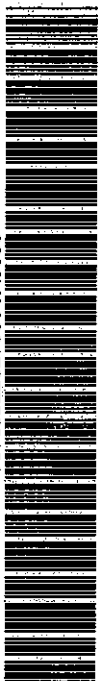
Certification

Name: Jed R. Schlacter

Date: July 14, 2011

Registration #: VA0001787756

Service Request #: 1-663109874



Schlacter & Associates
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EXHIBIT B

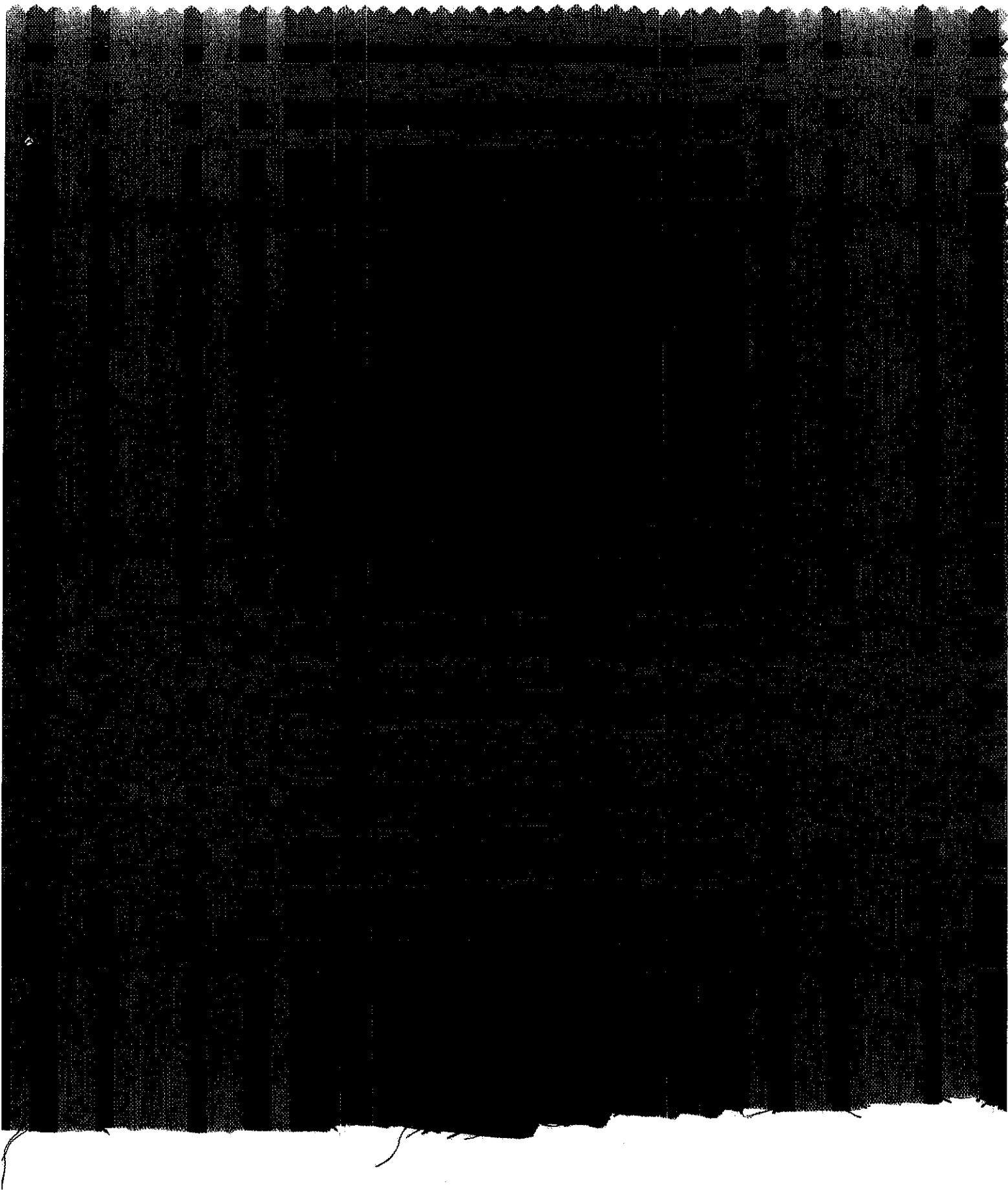


EXHIBIT C

